

MINUTES

Montana Fish and Wildlife Commission Meeting

FWP Headquarters

1420 East 6th Avenue; Helena, MT

January 9, 2014

Commission Members Present: Dan Vermillion, Chairman, Richard Stuker Vice-Chairman,

Matthew Tourtlotte (via Video), Larry Wetsit and Gary Wolfe

Fish, Wildlife & Parks Staff Present: Paul Sihler, Chief of Operations and FWP Staff.

Guests: January 9, 2014 - See Commission file folder for sign-in sheet.

Topics of Discussion:

- 1. Call to Order - Pledge of Allegiance**
- 2. Approval of Minutes of December 12, 2013 Commission Meeting**
- 3. Approval of Commission Expenses**
- 4. Commission Reports**
- 5. Director's Report**
- 6. Joint Board CSKT/FWP Recommendation to Remove Slot Limit on South Half of Flathead Lake**
- 7. Fishing Access Site Annual Rule – Proposed**
- 8. Waters Approved for Commercial Bait Seining Annual Rule – Final Action**
- 9. Rules Regarding the Placement of Fish into Montana Waters without Authorization – Proposed**
- 10. Keep Cool Hills Recreational Use Agreement Biennial Rule Renewal - Proposed**
- 11. Chronic Wasting Disease EA – Final Action**
- 12. Lost River WMA Land Holding Adjustment – Endorsement**

13. Public Comment – For Issues Not On This Agenda

1. Call to Order - Pledge of Allegiance

Chairman Vermillion called the meeting to order at 1:02 p.m. and led the Pledge of Allegiance.

2. Approval of Minutes of December 12, 2013 Commission Meeting

Action: Commissioner Stuker moved and Commissioner Wetsit seconded the motioned to postpone the approval of the December 12, 2013 minutes until the February meeting. Motion carried.

3. Approval of Commission Expenses

Action: Commissioner Stuker moved and Commissioner Wolfe seconded the motion to approve the Commission expenses. Motion Carried.

4. Commission Reports

Commissioner Wetsit stated things have been quite in his District. Received numerous calls from sportsmen regarding the season setting; a lot of negative comments on the removal of whitetail deer B tags; recommended they submit their comments and attend the meetings.

Commissioner Wolfe stated he attended a sportsmen town hall meeting hosted by Senators Boulanger and Thomas in Hamilton, great turnout, main conversation was the proposed season settings in Region 2; attended the big season setting meeting in Kalispell, strong support for the reduction in antlerless mule and whitetail deer with a caveat that the Department be flexible to recognize there may be hunting districts where it is still appropriate to continue antlerless harvest; continued concern and objection from hunters on the concept and opportunity to take 2 elk during season with the B tag approach, not needed in western Montana. Received phone calls regarding season settings; fall turkey take with a crossbow; and handicap hunting, would like the Department to look at the regulations to provide opportunities for severely handicap individuals to participate in antlerless elk harvest opportunities.

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Commissioner Stuker stated Region 4 has held two late season elk damage hunts; received a call from a gentleman who would like to demonstrate wolf snares to the Commission; a few calls on late season elk hunts to help control the population on private lands; received several calls concerning the deer season settings. Attended the Region 4 Citizen Advisory Council meeting and Sun River Management Team meeting.

Commissioner Tourtlotte reported it has been somewhat quiet in his District. Received several calls on season settings; people concerned about the deer setting proposal; majority of the people support the anecdotal reasoning; might be a trend to support eliminating some or most of the doe harvest; Regional meetings are set for next week.

Chairman Vermillion stated he received a call from Mr. Hoppe regarding the hunting proposal in HD 313 and the youth elk hunting opportunities in the southern part of paradise valley; a lot of concern regarding the wolf take and over harvest in the Gardner area; several phone calls regarding deer proposal and the broad based approach; strong advocacy for the Adaptive Harvest Management Plan; damage hunts have taken place; attended the WAFWA winter meeting, big issue and concern over emerging technology.

5. Director's Report

Paul Sihler, Chief of Operations, stated the Department is starting outreach to Citizen Advisory Councils, constituents and season setting meetings, on the budget situation; building on the recommendations from the Licensing and Funding Advisory Council.

14. Joint Board CSKT/FWP Recommendation to Remove Slot Limit on South Half of Flathead Lake

Bruce Rich, Fisheries Administrator, stated since 1992 the length-based fishing regulations have restricted lake trout harvest on Flathead Lake. A slot limit that prohibits harvest of lake trout in the length range 30 to 36 inches; and a daily harvest limit of one lake trout over 36 inches in length. The Confederated Salish and Kootenai Tribes (CSKT) recently approved a change to fishing regulations on the Flathead Indian Reservation portion of Flathead Lake, which removed the lake trout length-based regulations and leaves in place the daily harvest limit of 100 lake trout. The Flathead Reservation Joint Fish and Wildlife Board recommend the FW Commission accept this change in FWP fishing regulations for lake trout, as approved by the CSKT Tribal Council. At the August 21, 2013 meeting of the Flathead Reservation Joint Fish and Wildlife Board, CSKT raised the issue of removing the slot limit and length limit for lake trout at the Flathead Reservation Joint Fish and Wildlife; published notice of the proposed change in the Char-Koosta News newspaper; held a public meeting in Pablo; and on December 12, the board recommended forwarding the regulation proposals to the FW Commission for final action.

Rich recognized Jim Satterfield, FWP Region 1 Supervisor, Mark Deleray FWP Biologist, Les Evarts CSKT Fisheries Manager, and Barry Hansen CSKT Fish Biologist.

Action: Commissioner Stuker moved and Commissioner Vermillion seconded the motioned that the Commission adopt the Flathead Reservation Fish and Wildlife Board's recommendation to remove the lake trout slot limit and the harvest limit of one lake trout over 36 inches daily for the Flathead Indian Reservation portion of Flathead Lake, to go into effect on March 1, 2014.

Commissioner Wolfe asked what was the reason for implementation in 1992 and what is the rationale for removing it.

Deleray explained why the implementation took place in 1992.

Evarts explained the reasoning for the removal of the slot.

Chairman Vermillion asked for public comment.

Norm Brewer, Charter Businessman, opposes removing slot limit.

Bob Orsua, Outfitter, opposes removing slot limit.

Rod Rogers, questions the science of this decision; opposes removing of the slot limit.

Chairman Vermillion strongly supports, interesting first step, the tribe has every right to remove the slot.

Action on Motion: Motion Carried.

15. Fishing Access Site Annual Rule – Proposed

Charlie Sperry, FWP Recreation Management Specialist, explained FWP is recommending the Commission propose a new Fishing Access Site (FAS) Annual Rule. The rule pertains to: fees; stipulations on camping at a FAS; group use permit requirements (groups of more than 30 people); and special recreation permit requirements. The new rule would replace the current FAS Annual Rule, which was adopted by the Commission in February 2013. The proposed rule doesn't contain any changes to the current rule. Upon approval of the proposed rule by the Commission, FWP will announce and conduct a public comment period.

| FEE CATEGORY: | FEE AMOUNT: |
|---|---|
| CAMPING | |
| Montana fishing license holders | \$7 per night |
| Montana fishing license holders (Montana Residents: disabled or 62 years or older) | \$3.50 per night |
| Non-license holders | \$12 per night |
| Non- license holders (Montana Residents: disabled or 62 years or older) | \$6 per night |
| GROUP USE PERMITS (GROUPS, EVENTS, ACTIVITIES INVOLVING MORE THAN 30 PEOPLE) | |
| Permit | \$3 per person per day or \$5 per vehicle per day |
| FACILITY RENTALS | |
| Rental | \$75 per day |
| Deposit | \$100 |
| SPECIAL RECREATION PERMITS (BLACKFOOT AND MADISON RIVERS) | |
| Commercial Use | Fee amount subject to FWP Commercial Use Permit Fee Rule |
| Organized Groups | \$3 per person per day, or \$100, whichever amount is greater |
| Competitive Events | \$3 per person per day, or \$100, whichever amount is greater |
| COMMERCIAL USE PERMITS | |
| Permit | Fee amount subject to FWP Commercial Use Permit Fee Rule |

Applicability of Rule & Special Rules/Regulations

- A.** This annual rule applies to non-commercial use of fishing access sites, organized groups and competitive events on the Blackfoot and Madison rivers, and commercial use of the Alberton Gorge (all other commercial use of fishing access sites are governed by 12.14.101 through 12.14.170, ARM).
- B.** The rule is in effect from date of adoption through December 31, 2013. The Fish, Wildlife and Parks Commission may amend the rule at any time during this time period.
- C.** Fees shall be prominently signed and posted where applicable.
- D.** The Department's public use regulations, 12.8.201 through 12.8.213, ARM, unless otherwise posted or noted in this fee rule, shall apply to use of fishing access sites.
- E.** The Commission delegates to the director or the director's designee the authority to post special rules, consistent with existing Department or commission authority, related to public use, health, safety, welfare, and resource protection per 23-1-106, MCA.

Penalties

- A. No person shall use campgrounds or facilities, or otherwise participate in activities for which a fee has been established without first paying the required fee. Any violation of this provision is punishable by a fine not to exceed \$500 per 23-1-106, MCA, and 12.8.213, ARM.
- B. Violation of fee requirements, administrative rules, or state laws may result in immediate expulsion from the area in addition to other enforcement actions.

Severability Clause

- A. If a part of this fee rule is invalid, all valid parts are severable from the invalid part and shall remain in effect. If a part of this fee rule is invalid in one or more of its applications, the part remains in effect in all valid applications severable from the invalid applications.

Camping at Fishing Access Sites

- A. There are no daily entrance fees at fishing access sites. The funding sources for operation and maintenance of fishing access sites include revenue from the sale of fishing licenses, motor vehicle registration fees, permit fees, and federal funding sources.
- B. There is a fee to camp at fishing access sites that are posted as fee areas. A visitor must immediately pay the required camping fee upon arriving at or occupying a campsite. The camping permit must be attached to the campsite post if available or displayed on driver's side dashboard.
- C. A camping fee is charged per each individually signed or numbered campsite unless otherwise posted. The Department may apply the campsite fee to each camping unit for dispersed camping areas and campsites that accommodate multiple camping units.
- D. Fishing access site camping seasons vary based upon specific site conditions, location, and other factors. Some sites may be closed during the winter season or other portions of the year (contact a Department regional office for details).
- E. A person must have a valid Montana fishing license to qualify for the reduced (lower) camping fee at fishing access sites.
- F. 23-1-105(2), MCA, provides that an overnight camping fee will be discounted 50% for a campsite rented by a Montana resident who is a:
 - i. senior citizen 62 years of age or older and provides a photo identification with Montana resident address (e.g., Montana Driver's License); or
 - ii. person with a disability, verified by either a disability form obtained from the Department and signed by a physician, a Resident Disability Conservation License, or a disability permit or license plate issued by the Montana Motor Vehicle Division.
- G. Only one discount may be applied to an overnight camping fee, not a combination.
- H. Campsites may not be "held" by an individual or party for another individual or party arriving later. No person may pay a camping fee or leave an item as a means to reserve or hold an unoccupied site.
- I. Unless otherwise posted, the maximum occupancy at each individually signed or numbered campsite is eight (8) people.
- J. Unless otherwise posted, the maximum occupancy at each individually signed or numbered campsite is one camping unit and up to two additional tents. "Camping unit" means one sleeping device or shelter, including but not limited to a tent, motor home, camping bus, truck mounted camping shell, pull-type camper, or other device designed and commonly used for sleeping.

- K. All camping units with the exception of tents, and all motor vehicles, boats, trailers, motorcycles, non-licensed recreational vehicles, and other similar forms of transportation must be confined within the designated parking area of the campsite or at designated overflow (alternative) parking areas.
- L. The Department may establish a dispersed camping area with occupancy limits and terms and conditions for use of the area. These areas may require a group use permit.
- M. No person may leave a campsite unattended overnight. Nightly occupancy is required.
- N. No person may leave a vehicle unattended for more than 48 hours unless the area is otherwise posted.
- O. Camping at one or more campsites in any one designated recreation area for a period longer than fourteen (14) days during any 30-day period is prohibited unless otherwise posted. In areas so posted, said occupancy shall be limited to seven (7) days during any 30-day period. Such 30-day periods shall run consecutively during the year commencing with the first day each person camps in a designated recreation area each year.
- P. No person may set up camp in areas other than designated campgrounds, or in any Department-administered shelter building unless the shelter is posted as a camp shelter.
- Q. No person or group may set up camp or otherwise occupy a campsite that has already been occupied or paid for by another person or group.
- R. Checkout time for campers using fee areas is 2:00 p.m. the following day unless otherwise posted.
- S. All camping fees include the 7% State of Montana accommodation tax as per 15-65-111 & 15-68-102, MCA.

Group Use Permits

- A. All groups, events, or activities that include more than 30 people must secure a group use permit prior to using a fishing access site. Examples of groups or events that may require a group use permit include but are not limited to wedding parties, family reunions, fishing contests, and research activities. A group use permit may also be required for groups of 30 or fewer people or special events and activities based on management or resource protection objectives for a site, special rules or regulations, or other determining factors.
- B. Groups, events or activities that meet the definition of commercial use are governed by the Department's commercial use rules (Commercial Use Administrative Rules, ARM 12.14.101 through 12.14.170 and the Commercial Use Permit Fee Rule).
- C. Group use permit applications should be submitted to the appropriate regional office a minimum of seven (7) days prior to the proposed date of use.
- D. A group use permit may be issued to a group or individual representing a group.
- E. The Department may deny or amend a request for a group use permit based on the management and resource protection goals for a site or other extenuating circumstances.
- F. The proposed group use must comply with pertinent state and federal laws and regulations including public health, safety, and air and water quality.
- G. A group or individual receiving a group use permit must comply with the terms, conditions, and stipulations of the permit. The Department may establish limits on the size of groups.
- H. The proposed group use must not adversely impact neighboring properties, existing archaeological, historical, cultural, or natural values and must not conflict with management objectives and guidelines.

- I. The Department may assess a fee for group use at fishing access sites. The fee must be submitted in advance with the permit application unless otherwise specified by the Department. Refer to the Fishing Access Site Use Fee Table to calculate applicable fees.
- J. The Department may adjust the group use permit fee upward or downward to accommodate the nature of the activity, compensate for site impacts or Department staffing needs, or for other unique circumstances pertaining to the permitted activity.
- K. The Department may adjust the group use permit fee on a case-by-case basis for educational groups when the following conditions are met:
- i. the group is from a bona fide institution that meets the definition of an educational group;
 - ii. the group provides a written explanation of the educational purpose of the visit; and
 - iii. the use is not primarily for recreational purposes.
- L. The Department may adjust the group use permit fee on a case-by-case basis when the group or event:
- i. donates proceeds or services to the management or improvement of fishing access sites, including the maintenance, management, or the improvement or development of facilities;
 - ii. donates proceeds from the event or activity to a nonprofit organization or charitable cause; or
 - iii. is organized primarily for children under the age of thirteen.
- M. A cleaning/security deposit may be required in advance for group use permits. The Department may waive the deposit requirement for groups that have previously reserved a facility and demonstrated satisfactory cleanup and/or restoration of resources and facilities and compliance with the permit terms and conditions.

Facility Rentals

- A. An individual or group may reserve a shelter or other facility subject to availability and approval by staff. The Department may deny the reservation request or stipulate the conditions of use based on the nature of the proposed use and the regulations and management objectives in place at the fishing access site where the use would occur.
- B. There is a rental fee for use of shelters and other facilities. The fee must be paid prior to use of the facility.
- C. The Department may adjust the rental fee on a case-by-case basis for educational groups or an individual or group that donates money or services to the management or improvement of fishing access sites.
- D. A cleaning/security deposit may be required and must be submitted in advance with the facility rental fee. The Department shall assess the cleanup and/or restoration of resources and facilities and if conditions are satisfactory the Department shall refund the deposit.
- E. The Department may waive the deposit requirement for groups that have previously reserved a facility and demonstrated satisfactory cleanup and/or restoration of resources and facilities.
- F. The Department shall refund the cleaning/security deposit if the reservation is canceled more than seven (7) days in advance. If a reservation is canceled less than seven (7) days before the intended use period, the cleaning/deposit shall be retained. If the facility is unavailable for the intended use due to unforeseen conditions, both the fee and deposit shall be refunded.

Special Recreation Permits

- A. The Department, in conjunction with the Bureau of Land Management (BLM), requires a Special Recreation Permit for commercial use, competitive events, and organized group activities at Department and BLM access sites along the Blackfoot River and Madison River.

- i. “Commercial use” is defined as per ARM 12.14.101(3).
- ii. “Competitive event” means any organized, sanctioned, or structured use, event, or activity on lands owned or managed by the Department or related waters in which two or more contestants compete, the participants register, enter, or complete an application for the event, and/or a predetermined course or area is designated.

- iii. “Organized group activity” means a structured, ordered, consolidated, or scheduled event on, or occupation of, lands owned or managed by the Department or related waters that is not commercial or competitive.

B. The Department shall issue Special Recreation Permits pursuant to ARM 12.11.6501 through 12.11.6575, the Department’s Commercial Use Administrative Rules (ARM 12.14.101 through 12.14.170), and the Commercial Use Permit Fee Rule.

Blackfoot River Special Regulations:

The maximum sizes for organized and commercial groups on the Blackfoot River are as follows:

| River Reach | Organized Groups | Commercial Groups |
|--|-----------------------------|-----------------------------|
| | Maximum size, (individuals) | Maximum size, (individuals) |
| 1. Headwaters to the Mineral Hill area | 0 | 0 floating, 3 wading |
| 2. Mineral Hill area to North Fork confluence | 12 | 12 |
| 3. North Fork confluence (or Harry Morgan FAS) to Russell Gates FAS | 21 | 21 |
| 4. Russell Gates FAS to Roundup FAS | 30 (40 May 1 - June 15) | 30 (40 May 1 - June 15) |
| 5. Roundup FAS to Johnsrud Park FAS* | 30 (40 May 1 - June 15) | 30 (40 May 1 – June 15) |
| 6. Johnsrud Park FAS to Bonner | Based upon site capacity | Based upon site capacity |
| 7. North Fork of Blackfoot River from the USFS boundary to Harry Morgan FAS. | 0 | 12 |

*At Whitaker Bridge FAS, the maximum commercial group size will be 25 individuals from June 15 through Labor Day.

Exceptions to the maximum group sizes on the Blackfoot River are as follows: river reaches four (4) and five (5) include a whitewater season (May 1 through June 15) with special group sizes to accommodate the traditional spring runoff and whitewater rafting season; the Regional Supervisor or designee may adjust this time period annually to address seasonal peak spring flow conditions. A person may apply for a Blackfoot River special recreation permit and request to exceed the maximum group size limit. In such cases, the Department may conduct an environmental assessment to assess the predicted impacts of the request. Such requests may be subject to cost recovery. “Site capacity” on the Blackfoot River is the number of people each site can accommodate without significant impacts to the site resources or social experience. It is the maximum use level for all recreational use, including the combined use of a recreation site by the general public and any permitted recreational uses (commercial, competitive and organized groups). Each permit in this river reach shall be determined on a case-by basis. The impacts and acceptable size limits for competitive events on the Blackfoot River shall be assessed on site-specific capacities and suitability. The permitted group size for a competitive event may be smaller than the maximum group size for organized and commercial use based on the cumulative impacts of all anticipated use. Special recreation permits do not grant exclusive use of a recreation site to any permitted group. The following criteria shall be used to determine the maximum group size for a proposed competitive event on the Blackfoot River: whether the competitive events is consistent with the management objectives outlined in the Blackfoot River Recreation Management Plan; whether the combination of the anticipated general public use and the special recreation permit use is expected to be within the site capacity limits; whether the site is capable of accommodating the proposed number of people and vehicles without damage or degradation to the facilities or resources; whether the proposed activity and group size is compatible with the site facilities; the timing and duration of the proposed event; and benefits to the public and/or river resources. If the proposed event is to occur in critical native fish recovery areas, the activity must be consistent with current bull trout recovery considerations.

Commercial Use Permits

A. Commercial use permit requirements and fees are identified in the Department’s Commercial Use Administrative Rules (ARM 12.14.101 through 12.14.170), and the Commercial Use Permit Fee Rule. Exception: See below for special regulations on commercial use on the Alberton Gorge.

Alberton Gorge Special Regulations:

- B. Alberton Gorge shall be defined as the region between and including Cyr fishing access site to Tarkio fishing access site along the Clark Fork River.
- C. Commercial use, as defined in ARM 12.14.101(3), within the Gorge is limited to commercial use that demonstrated “Historical Commercial Use” of the Gorge prior to January 1, 1998 by registering with the Department by March 15, 1999. Those who failed to demonstrate proof of prior commercial use by that date are not considered historical commercial users and therefore are prohibited from conducting commercial use within the Gorge.
- D. In accordance with ARM 12.14.120(1), a restricted use permit is required in advance to conduct commercial use within the Alberton Gorge.
- E. The Department’s Commercial Use Administrative Rules (ARM 12.14.101 through ARM 12.14.170) and Commercial Use Permit Fee Rule apply to commercial use within Alberton Gorge.

Food Storage

- A. The Department may designate fishing access sites where bear resistant food storage is required.
- B. Food storage requirements shall be prominently signed and posted where applicable.
- C. Bear resistant food storage shall be required at designated fishing access sites per the following food storage order:
 - 1. Human, pet and livestock food (except baled or cubed hay without additives), garbage, and all other attractants shall be stored in an approved bear resistant manner or container when camp is unattended or during nighttime hours.
 - 2. Wildlife carcasses, birds, fish or other animal parts that are within ¼ mile of any camp or sleeping area shall be stored in an approved bear-resistant manner or container when unattended. If a wildlife carcass is within an attended camp during daytime hours it may be on the ground.
 - 3. Attractants (such as food leftovers or bacon grease) shall not be buried, discarded, or burned in an open campfire.
 - a) Leftover food or food waste products may be placed in an appropriate, sealed container and packed out with garbage or deposited in a bear resistant trash receptacle where provided.
 - b) Leftover food or other attractants may be burned in a contained stove fire.
 - c) Attractants may be placed into a suitable container (e.g. tin can) to prevent leaching into the ground and burned over an open campfire. Any remaining attractants unconsumed by burning shall be placed with other garbage and packed out or deposited in a bear resistant trash receptacle where provided.

4. The responsible party for any dead pack animal or livestock shall report the death and location of any livestock to a FWP employee within 24 hours of discovery. The responsible party will be required to dispose of the carcass as directed by the Department. In some very remote areas, it may not be possible to meet the 24-hour requirement. In these special cases, the responsible party shall report to a FWP employee, the discovery of any dead livestock within 48 hours.
5. Bear-resistant containers must meet the following criteria:
 - a) A securable container constructed of solid material capable of withstanding 200 foot-pounds of energy applied by direct impact.
 - b) The container, when secured and under stress, will not have any openings greater than 1/4 inch, that would allow a bear to gain entry by biting or pulling with its claws.

Bear-resistant container testing and approval programs are available through the US Forest Service. Other bear-resistant containers developed for personal use may be inspected for approval by the local FWP game warden or fishing access site coordinator or their designated representative(s).

D. Definitions:

1. "Attended" means at least one adult person (attendee) is physically present within 100 feet of, and can visually observe attractants at all times. Attended camp policy does not apply when campers are asleep or do not have visual contact with and physical control of the attractants. During nighttime hours, control is defined by having the attractant within arm's reach or secured in an agency approved container or manner.
2. "Attractant" means any item potentially attracting and/or rewarding a bear. This shall include:
 - a) food as defined below
 - b) food leftovers (bones, scraps, grease)
 - c) garbage from humans
 - d) livestock foods (except baled or cubed hay without additives)
 - e) pet foods
 - f) wildlife carcasses
 - g) livestock carcasses
3. "Food" means any nourishing substance, which includes human food or drink (canned, solid or liquid), livestock feed (except baled or cubed hay without additives), pet food, toothpaste, soap, birdseed, and hummingbird food.
4. "Attendee" means an adult (14 years of age or older) in control of attractants.
5. "Bear-resistant container" means a securable container constructed of solid material capable of withstanding 200 foot-pounds of energy applied by direct impact. The container, when secured and under stress, will not have any openings greater than one-quarter (1/4) inch, that would allow a bear to gain entry by biting or pulling with its claws.
6. "Bear-resistant manner" means the storage of any attractant or foods in one of the following ways:
 - a) Secured in a hard-sided camper, vehicle trunk, cab or trailer cab.
 - b) Secured in a hard-sided dwelling or storage building.
 - c) Suspended at least 10 feet up (from the bottom of the suspended item) and 4 feet out from any upright support (i.e. tree, pole).
 - d) Stored in an agency approved bear-resistant container.
 - e) Stored within an approved and operating electric fence.
 - f) Stored in any combination of these methods.

- g) Stored by methods other than those described in a-f, that shall be approved in writing by the FWP Regional Supervisor.
- 7. "Contained fire stove" means a metal stove that completely encloses the fire.
- 8. "Daytime" means 1/2-hour before sunrise until 1/2-hour after sunset.
- 9. "Nighttime" means 1/2-hour after sunset until 1/2-hour before sunrise.
- 10. "Livestock" means cattle, sheep or a domesticated pack or riding animal, such as mule, horse, llama, or goat.
- 11. "Wildlife carcass" means the body, or any parts thereof, of any deceased wild animal, bird, or fish.
- 12. "Approved electric fence means, at a minimum:
 - a) The fence will be set up as a "tight wire" fence. The wire will be tight and under tension, not loose or sagging, and posts will be firmly installed.
 - b) Minimum fence height: 40 inches to top wire.
 - c) Maximum spacing between posts: 8 feet.
 - d) Wire conductors: Minimum of 4 hot wires evenly spaced with no more than 10-inch spacing between wires. Bottom hot wire must be within 10 inches of the ground. Top hot wire must be within 1 inch of the top of each post or attached to the highest connector on fabricated posts. All wire must be smooth metal fence wire of at least 16-gauge or poly wire of 9 or more steel strands. The minimum length ground rod is 2 feet, of which a minimum of 23" is driven into the ground.
 - e) Fence charger (minimum): (1) stored energy of 0.7 joules; (2) tested peak output of 5000 volts; (3) 40 shocks per minute. User must be able to test electrical output in the field.
 - f) The charger must be made inaccessible to disturbance from a bear. The charger may be stored within the interior of the fence or located a minimum of 10 feet above the ground.
 - g) Minimum distance between fence and items enclosed by electric fence: 3 feet.

Action: Commissioner Wetsit moved and Commissioner Wolfe seconded the motioned that the Commission propose a Fishing Access Site Annual Rule and seek public comments.

Chairman Vermillion asked for public comment.

Action on Motion: Motion Carried.

16. Waters Approved for Commercial Bait Seining Annual Rule – Final Action

Don Skaar, Fisheries Bureau Chief, explained a Montana bait fish seining license is required for persons 15 years of age and older to seine for and transport bait fish for commercial purposes and for any person who seines for and has in his or her possession more than 24 dozen nongame bait fish. At the November meeting the Commission proposed a list of waters where commercial bait fish seining would be allowed. Public comment was taken and one comment was received. If the Department determines that it is appropriate to revise

bait use rules and allow the additional seining opportunities, it may make proposals during the fishing regulation-setting process later this year.

LIST OF APPROVED SEINING WATERS

Nongame bait fish (except carp, goldfish and rainbow smelt) may be taken from the following waters:

Western Fishing District

Flathead Lake (north half only)

Flathead River (mouth to Highway 2 Bridge) plus adjacent sloughs

Ashley Creek

~~Ashley Lake tributaries~~

~~Stillwater River (Dog Lake downstream to the mouth)~~

~~Finger Lake~~

Fish Lake, Lincoln County

Flathead River (Flathead Reservation boundary to confluence with Clark Fork River)

Echo Lake

~~Whitefish River~~

~~Herrig Creek (Little Bitterroot tributary)~~

Clark Fork River (mouth of Flathead River to Thompson Falls Dam)

Noxon Rapids Reservoir

Upper. Lower and Middle Thompson lakes

Central Fishing District

Bighorn Lake and Afterbay Reservoir

Bighorn River -- Afterbay Dam to cable 600 feet downstream and below Bighorn Access Area

Clarks Fork Yellowstone River -- Downstream from bridge at Bridger

Kammerzell Reservoir

Marias River & tributaries downstream from Interstate 15

Missouri River downstream from Morony Dam

Muddy Creek Drainage near Vaughn, including all streams and drainage canals

Streams and ditches in the Yellowstone River Drainage downstream of the mouth of the Clarks Fork

Teton River & tributaries downstream from Interstate 15

Tiber Reservoir (Lake Elwell) & tributaries downstream from Interstate 15

Eastern Fishing District

Streams -- Nongame bait fish may be taken from all streams in the Eastern District **except** the following:

Milk River and tributaries above Fresno Dam

Beaver Creek upstream from Beaver Creek Reservoir

Big Dry Creek and Little Dry Creek north of Highway #200 in Garfield County

Hanging Woman Creek downstream from the Birney Road to its confluence with the Tongue River

Otter Creek downstream from Highway #212 to its confluence with the Tongue River

Lone Tree Creek and Fox Creek, tributaries to the Yellowstone River in Richland County

Missouri River downstream from the mouth of the Milk River

All irrigation canals and ditches in the Eastern Fishing District are open year around for taking nongame bait fish.

Nongame bait fish may be taken from the following reservoirs in the Eastern Fishing District:

| <u>WATER</u> | <u>COUNTY</u> | <u>WATER</u> | <u>COUNTY</u> |
|---|------------------|--|---------------|
| Anita Reservoir | Yellowstone | Lame Steer Reservoir | Wibaux |
| Bailey Reservoir | Hill | Lee (Sam) Reservoir | Dawson |
| Bainville Railroad Ponds | Roosevelt | Lindsay Reservoir | Dawson |
| Baker Lake | Fallon | Little Warm Reservoir | Phillips |
| Beaver Creek Reservoir | Hill | Lyons Reservoir | Blaine |
| BLM Reservoirs | Blaine, Phillips | McChesney Reservoir | Phillips |
| BLM Reservoirs in Willow Creek Drainage | Valley | Medicine Lake Nat'l. Wildlife Refuge | Sheridan |
| Box Elder Reservoir | Sheridan | Milk River and its impoundments downstream of Fresno Dam | |
| Buxbaum West Reservoir | Richland | Nelson Reservoir | Phillips |
| Castle Rock Lake | Rosebud | Petrolia Reservoir | Petroleum |
| Cole Ponds | Phillips | Raymond Reservoir | Sheridan |
| Cow Creek Reservoir | Blaine | Schlesinger Perch Pond | Rosebud |
| Doug Gardner #2 Reservoir | Carter | Shoot Reservoir | Valley |
| Dry Fork Reservoir | Blain | South Sandstone Reservoir | Fallon |
| Engstrom Reservoir | Sheridan | Spotted Eagle Pond | Custer |
| Ester Reservoir | Phillips | Talcott Pond | Carter |
| Flat Lake | McCone | Tongue River Reservoir | Big Horn |
| Frenchman Reservoir | Phillips | Tripple Crossing Reservoir | Valley |

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|------------------------------|-------------------|---------------------|----------|
| Gartside Reservoir | Richland | Valley Reservoir | Valley |
| Grub Reservoir | Valley | VR2 Reservoir | Valley |
| Gut Shot Reservoir | Valley | Wards Reservoir | Valley |
| Hedstrom Reservoir | McCone | Whiteside Reservoir | Garfield |
| Johnson Reservoir | Dawson | Whitetail Reservoir | Daniels |
| Killenbeck Reservoir | Daniels | Wibaux Pond | Wibaux |
| Kuester Reservoir | Richland | | |

Action: Commissioner Wolfe moved and Commissioner Tourtlotte seconded the motioned that the Commission adopt FWP's proposed final Commercial Bait Fish Seining Waters list for implementation in 2014.

Commissioner Wetsit asked how the Department determines what streams to allow.

Skaar explained it is developed over time with people who have identified areas where there are good bait populations; the Department then evaluates those areas identified.

Chairman Vermillion asked for public comment.

Action on Motion: Motion Carried.

17. Rules Regarding the Placement of Fish into Montana Waters without Authorization – Proposed

Bruce Rich, Fisheries Administrator, explained the Department has an Illegal and Unauthorized Introduction of Aquatic Wildlife policy that was approved by the Director in 2002. The new rules would replace the Department's policy, recognize the placement of unauthorized species into a waterbody is a significant concern and is likely to have many adverse impacts on existing fish species, aquatic habitat, angling opportunities, and the economy. The Department is recommending five new rules: The General Purpose Rule describes the intent of the rule, the ecological, social and financial problems associated with unauthorized fish species, and the commitment by the Department to suppress or eradicate unauthorized fish; the Initial Response and Action Plan rule describes considerations that will be taken into account when establishing management objectives for unauthorized species; the Management Actions Rule provides a list of management actions that may be considered in response to unauthorized species; the Adaptive Management Approach for Illegally Introduced Species Rule describes the process whereby the Department may modify its action plan for an unauthorized species; and the Reporting Requirements Rule describes the documentation that must be provided with regarding actions taken for each unauthorized species. Following a proposal by the Commission, the Department will conduct a public involvement process according to the requirements of the Montana Administrative Procedures Act.

NEW RULE I GENERAL PURPOSE

- (1) As determined by the department, these rules pertain to the department's response to the placement of live fish into public waters without authorization by the department whether the cause of the placement is known or unknown. These rules are intended to cover all placement of unauthorized species into the public waters, including from outside or inside the state through introduction or transplantation. Unauthorized species include any live fish placed into public waters without authorization.
- (2) The unauthorized placement of fish into public waters is of significant concern and is likely to have many adverse impacts, including but not limited to:
 - (a) adverse impacts on native, wild and stocked fish populations;
 - (b) potential to spread disease;
 - (c) degradation of water quality;
 - (d) degradation of aquatic habitat;
 - (e) increased fishery management costs;
 - (f) loss of angling opportunities and quality; and

- (g) harm to local and regional tourism economies.
- (3) The department and commission shall make prevention of and response to unauthorized species a priority.
- (4) During efforts to respond to the placement of unauthorized species, the department will endeavor to protect the previously existing fishery and suppress or eradicate the unauthorized species to maintain the existing management objectives for that fishery.

NEW RULE II DEPARTMENT'S INITIAL RESPONSE AND ACTION PLAN

- (1) The department shall begin an initial investigation within 30 days after the report of the presence of an unauthorized species in an attempt to confirm that an unauthorized placement has occurred and to estimate the distribution, abundance, age structure, and potential population expansion of the unauthorized species.
- (2) The department shall prepare an action plan for responding to an unauthorized species. The action plan will identify the department's immediate and long-term management objectives for the unauthorized species and the management actions that may be implemented to achieve those objectives. The management objectives shall be based on a risk and feasibility assessment, with consideration for following:
 - (a) the risk that the unauthorized species could expand into connected or nearby waters;
 - (b) the current distribution of the unauthorized species and the proximity of those populations to the new placement;
 - (c) the probability that the unauthorized species will survive and propagate;
 - (d) the impact that the unauthorized species might have on the existing fishery, especially threatened or endangered species, native species, game species and important forage species;
 - (e) the immediate and long term impacts that the unauthorized species might have on previously existing angling opportunities; and
 - (f) the immediate and long term economic impacts that the unauthorized species might have on the department, the public, and the economy.
- (3) To protect existing fisheries, local economies, wildlife enjoyment, and angler opportunities, the department shall attempt eradication or suppression of the unauthorized species.
- (4) The department shall attempt to identify and cite any individuals responsible for the unauthorized placement and seek penalties and restitution pursuant to the penalties and fines outlined in law.

NEW RULE III MANAGEMENT ACTIONS

- (1) The department's action plan for responding to a confirmed unauthorized species placement may include, as determined by the department, the following management actions for eradication or suppression:
 - (a) prohibit or discontinue stocking the waterbody if the presence of the unauthorized species reduces the effectiveness of the stocking effort;

- (b) prohibit or discontinue stocking of any forage fish species that benefits the unauthorized species;
- (c) modify angling regulations for the immediate and connected water bodies with unauthorized species including:
 - (i) liberalizing or removing daily angling limits;
 - (ii) enacting catch and release fishing;
 - (iii) extending or removing the angling season;
 - (iv) allowing capture methods other than hook and line;
 - (v) instituting mandatory catch-and-kill regulations; or
 - (vi) closing the water to all fishing.
- (d) deny applications for fishing contests that target the unauthorized species, except in cases where the department determines the contest is an essential tool for suppression or eradication and requires that the contest has catch-and-kill rules;
- (e) authorize commercial harvest of the unauthorized species;
- (f) implement physical control measures to reduce the population of unauthorized species, including:
 - (i) installation of fish barriers;
 - (ii) removal using chemical or mechanical methods;
 - (iii) netting spawning fish;
 - (iv) habitat manipulation (e.g. reservoir drawdown);
 - (v) removing illegal species when encountered incidental to other management or survey activities; or
 - (vi) disturbing spawning areas to reduce survival.
- (g) implementing angler harvest incentive programs.

NEW RULE IV ADAPTIVE MANAGEMENT APPROACH FOR UNAUTHORIZED SPECIES

- (1) The department may amend its management objectives for a body of water if after a reasonable period of time the department concludes that:
 - (a) the management actions have succeeded and the department has accomplished the management objectives and that continued implementation of the existing action plan is no longer necessary; or
 - (b) the management actions have failed to accomplish the management objectives, and that continued implementation of the existing action plan is unlikely to accomplish the desired outcome.
- (2) Revisions to the management objectives may prescribe management actions that are more tolerant or less tolerant of the presence of the unauthorized species and must include a rationale for any changes. The department shall report any revisions to the management objectives to the commission.

NEW RULE V REPORTING REQUIREMENTS

- (1) The department shall maintain an electronic repository utilizing a standardized format to document the initial investigation and subsequent management actions taken in response to each unauthorized species.
- (2) Documentation must include, but is not limited to:

- (a) results of the department's initial investigation to confirm the presence of the unauthorized species and information collected on the distribution, abundance, age structure, and potential population expansion of the unauthorized species;
 - (b) the action plan for responding to the unauthorized species, including the management objectives and potential management actions;
 - (c) a summary of management actions taken to respond to the unauthorized species; and
 - (d) changes to any action plan taken under the adaptive management approach.
- (3) The electronic repository shall be updated on an annual basis to include all new unauthorized species and changes to documentation regarding previously reported unauthorized species.

Action: Commissioner Wolfe moved and Commissioner Stuker seconded the motioned that the Commission propose the rules recommended by the Department for responding to the placement of fish into Montana waters without authorization.

Commissioner Wolfe asked what the timeline is for public comment and finalization.

Rebecca Dockter, FWP Chief Legal Counsel explained the Administrative Rule (ARM) process.

Commissioner Stuker asked what the difference is between an Administrative Rule and a policy and can the Commission change the rule in the future, if needed.

Dockter explained the Rule becomes a state law and is legally enforceable; the Commission can change the rule in accordance with the ARM process.

Chairman Vermillion stated Rule 2 does not appear to have a timeline for an action plan and response; would like it to be tightened up if possible; should consider adding language into rule for rewards.

Skaar stated the Department is working with a statewide angler group to put together a reward program.

Chairman Vermillion asked if the rule mandates a response from the Department other than an action plan.

Rich explained in certain situations, proper documentation is all that would be needed.

Chairman Vermillion asked for public comment.

Chairman Vermillion thanked the Department for all their effort in getting the rule done.

Action on Motion: Motion Carried.

18. Keep Cool Hills Recreational Use Agreement Biennial Rule Renewal – Proposed

Rick Northrup, Wildlife Management Section Chief, explained the proposed rule would extend for two years, a 15,000-acre cooperative management area north of Lincoln that was established by the Commission in 2007. Sieben Ranch Company owns most of the land, with some parcels owned by the Montana Chapter of The Nature Conservancy and a portion is administered by the Montana Department of Natural Resources and Conservation (DNRC). The cooperative management area rules would provide for managed public access throughout the year. Prior to 2006, unmanaged public access resulted in significant resource damage to lands in this area, causing affected landowners to consider closing the area to public access. Public involvement process included a meeting with landowners to discuss ideas for the possible management plan, they expressed concern about how traditional use of the lands might be affected; an information meeting in Lincoln where some opposition was voiced from local recreationists who had traditionally used the area with no management plan in place. In 2006 an Interim Management Agreement implemented under FWP's Special Access Project, provided managed public hunting access during the 2006 hunting season, public education through maps and information kiosks helped explain rules and rationale; overall public reaction to changes implemented was mixed, with some people resisting changes and others welcoming them; affected landowners and FWP staff were pleased with results of initial season. March 2007 Keep Cool Hills Management Area was finalized, with no complaints received from public recreationists or affected landowners. Public comment received during the rule renewal process was in support of the proposal. Without adoption of this proposal, Sieben Ranch Company may close lands under its control to public access.

Keep Cool Hills Recreational Use Agreement Biennial Rule

Montana Department of Fish, Wildlife and Parks and the Montana Fish & Wildlife Commission adopts the following rules and regulations to govern recreational use within the designated Keep Cool Hills Hunting Access and Recreation Management Area in Lewis and Clark County for the purpose of gaining hunting access and recreational privileges on private land, to prevent vehicular damage to soils and vegetation, and to avoid excessive disturbance to native wildlife including threatened and endangered species. This Rule is effective from March 29, 2014 to March 28, 2016. Because the public enjoyment of the recreational facilities of these lands necessitates rules, regulations and enforcement, the provisions of 23-1-106 and 87-1-303 M.C.A. apply. It is therefore ordered that it shall be unlawful for any person to:

Drive any motorized wheeled-vehicle in the above-described area except on county roads, on private roads designated open for motorized travel, or in designated parking and camping areas as posted. Landowners and/or their designee in the course of administrative work, and federal, state, and county officials in the course of their official duties will be exempt from these vehicular restrictions.

Park any vehicle in such a manner as to obstruct traffic or block any gate.

Trespass, hunt, or discharge a firearm within areas posted as safety zones. Target shooting and discharge of firearms is prohibited on Sieben Ranch Company land from June 1 through August 31, annually.

Remain in the above-described area when ordered to leave for cause by a landowner or law enforcement officer.

Camp on Sieben Ranch Company or The Nature Conservancy land except in designed areas as posted. Camping on DNRC land is allowed within 200 feet of customary access points, but limited to 7 days.

Disturb, harass or otherwise interfere with livestock.

Operate a snowmobile in the above-described area between April 2 and November 30. Snowmobile use is allowed seasonally from December 1 through April 1, and shall be restricted to designated trails.

Conduct commercial outfitting or guiding of hunters or fisherman in the above-described area.

Action: Commissioner Stuker moved and Commissioner Wetsit seconded the motion that the Commission approve the Keep Cool Hills Hunting Access and Recreation Management Area Biennial Rule.

Chairman Vermillion asked for public comment.

Chairman Vermillion thanked The Nature Conservancy and the Seiban's for continuing to work with the Department and the sportsmen of this area to provide quality public access.

Action on Motion: Motion Carried.

19. Chronic Wasting Disease EA – Final Action

George Pauley, Wildlife Management Section Chief, explained the decision notice and environmental assessment (EA) for FWP's Chronic Wasting Disease Management Plan for Free Ranging Wildlife in Montana was completed in 2005 and sought to outline FWP responses to CWD detection in free-ranging wildlife, by depopulating the local herd when various techniques showed that at least five percent of a herd contracted the disease. CWD would be eradicated by removing the host species, typically deer, within some area containing infected individuals. Similar actions were largely identified in other state wildlife agency plans that also tried to address the issue of CWD in deer. The typical prescription included eradication in specific areas and subsequent results showed that eradication efforts failed. Eradication efforts didn't result in a decline in disease prevalence or the abundance of animals in the infected herd; those efforts were typically unpopular with the public. The Commission suspended the management and monitoring elements of the 2005

CWD plan at in April 2013. FWP developed a new plan with specific changes in monitoring and management to address loss of monitoring funds and the experiences of other states and provinces with lethal management. The current knowledge from CWD research, and lessons learned from various management circumstances, hasn't revealed a clear prescription for managing CWD. Current state plans lean heavily on an adaptive management approach, which depends on research and experience to guide future decisions. The draft EA was released November 29, 2013 and followed by a 30-day comment period; seven comments were received with varying

points-of-views. The decision notice adopts elements of various alternatives to direct CWD surveillance and course of action, should CWD be detected in Montana.

Action: *Commissioner Stuker moved and Commissioner Wolfe seconded the motioned that the Commission adopt the final decision as described in the decision notice and as presented by FWP.*

Chairman Vermillion asked for public comment.

Commissioner Wolfe asked if there were statutes related to the transport of carcasses and meat that were harvested outside the state in CWD areas.

Pauley stated he believes there are no statutes regarding the importation of carcasses and meat in this area.

Commissioner Wolfe commented on the prevention of CWD, need to look at the high risk areas around the borders and reconsider how we manage our apex predators; need to be more ecological astute at managing predators and in high CWD areas.

Action on Motion: *Motion Carried.*

20. Lost River WMA Land Holding Adjustment – Endorsement

Rick Northrup, Wildlife Habitat Bureau Chief, explained the 2,992 acre Lost River Ranch Wildlife Management Area (WMA), was purchased by FWP in 2012 using Habitat Montana funds. As FWP assumed ownership and began implementing management plans for the WMA, it has become apparent there may be ways to improve management effectiveness and efficiency through better alignment of property boundaries. FWP is interested in exploring options with surrounding landowners, including private owners and DNRC to address management and access concerns. Options may include fee title acquisitions, conservation easements (CE), right-of-way easements, land exchanges, and short or long-term leases. With an endorsement to proceed, FWP would pursue options with adjacent landowners to better align boundaries and address access and management effectiveness. The purchase of this WMA underwent extensive public review during the acquisition phase, including an open house, written comments, comments provided at a public meeting and comments provided to the Commission in December 2012. Among the issues brought up during the public processes was concern about impacts to neighboring lands, public access to the WMA lands, and effective management of the WMA. With an endorsement to proceed, the projects would get a full public review, including MEPA, final Commission approval, and Land Board approval, if needed.

Action: *Commissioner Wolfe moved and Commissioner Stuker seconded the motioned that the Commission endorse FWP's request to proceed to pursue potential acquisition, easement, exchange or lease options for addressing inholdings, access, impacts to neighboring landowners, and management effectiveness on and adjacent to the Lost River Wildlife Management Area.*

Chairman Vermillion asked for public comment.

Jim Brown, Montana Wool Growers Association, supports proposal; cautions Commission on actions they will make in the future.

Kristen Hansen, HD33 State Representative, representing landowners, stated access is a problem; use caution when using FWP funds for statewide access for fee purchases; consider access and how to approach it.

Chairman Vermillion stated the reports he has received have been positive; there is an opportunity to improve landowner relations and access.

Commissioner Stuker stated access and landowner relations do need to be improved; supports inholdings and long term leases; had conversations with the two landowners and they are interested in visiting with FWP. Asked if there are any records on how many animals were taken off of the ranch this year.

Northrup stated he does not have any specific numbers.

Commissioner Stuker asked if possible, he would like to know what the numbers were.

Action on Motion: Motion Passed.

21. Public Comment – For Issues Not On This Agenda

Brian McCullough, Helena, questions late hunts and public hunting issues; believes the Department is not following the Elk Management plan.

Action: Commissioner Stuker moved and Commissioner Wolfe seconded to adjourn the meeting. Motion Carried.

The meeting adjourned at 2:38 p.m.

Dan Vermillion, Chairman

Paul Sihler acting for

M. Jeff Hagener, Director